

APPEAL NO. 162301
FILED JANUARY 4, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 19, 2016, with the record closing on October 13, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 9% as determined by (Dr. K), the Texas Department of Insurance, Division of Workers' Compensation (Division) designated doctor.

The claimant appealed contending that the hearing officer's determination that the claimant's IR is 9% is contrary to the preponderance of the evidence.

The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the compensable injury of (date of injury), includes chemical burns over 45% of the claimant's total body surface area and post-traumatic stress disorder. The parties further stipulated that the claimant reached maximum medical improvement (MMI) on September 14, 2015, as certified by both Dr. K and (Dr. S), a referral of the treating doctor.

The claimant testified that he was injured while cleaning equipment on the jobsite when heated caustic chemicals and steam were released spraying his chest, abdomen, and lower and upper extremities causing second and third degree chemical burns for which he underwent surgical treatment including skin grafts. The claimant indicated that his activities of daily living have been affected by the injury in that he is now sensitive to heat and sunlight and cannot effectively perform outdoor activities and additionally, that his ability to write is impaired due to pain and tightness of the skin on his right hand. The claimant further testified that he uses over the counter skin lotions periodically to treat skin irritations when he is exposed to sunlight and that he attends biannual follow-up appointments with his doctors at (Hospital).

Both Dr. K and Dr. S certified MMI on September 14, 2015, and both assigned an IR of 0% for the claimant's post-traumatic stress disorder. Using Table 2 on page 280 of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical

Association prior to May 16, 2000) (AMA Guides), Dr. K determined that the claimant qualified for a Class 1 impairment for skin disorders and assigned an IR of 9%. Dr. K indicated in his report that the claimant does need intermittent topical attention to his burn areas. Dr. S found that the claimant qualified for Class 2 impairment and assigned an IR of 18%.

Table 2 on page 280 of the AMA Guides describes the Impairment Classes and percents for Skin Disorders, in part, as follows:

Class 1: 0% - 9% impairment	Class 2: 10% - 24% impairment
Signs and symptoms of skin disorders are present or only intermittently present; and There is no limitation or limitation in the performance of <i>few</i> activities of daily living, although exposure to certain chemical or physical agents might increase limitation temporarily; and No treatment or intermittent treatment is required.	Signs and symptoms of skin disorders are present or intermittently present; and There is limitation in the performance of some of the activities of daily living; and Intermittent to constant treatment may be required.

The AMA Guides further provide that “[t]he impact of the skin disorder on daily activities should be the primary consideration in determining the class of impairment. The frequency and intensity of the signs and symptoms and the frequency and complexity of medical treatment should guide the selection of an appropriate impairment percentage and estimate within any class.”

In the Discussion section of her decision, the hearing officer states:

[The] [c]laimant presented the medical opinion from his treating doctor, [Dr.] H who outlined [the] [c]laimant’s limitations regarding exposure to sunlight and his ADL’s but his opinion did not address the third element listed under Class 2 of the AMA Guides. He did

not state how [the] [c]laimant's condition required intermittent to constant treatment.

A review of the evidence revealed that the effect on [the] [c]laimant's ADLs fit more appropriately under Class [1] and the criterion as to the requirement of intermittent to constant treatment under Class [2] was not sufficiently shown.

We note the hearing officer asserts that inclusion in Class 2 under Table 2, page 280 of the AMA Guides requires a showing that the claimant's condition requires intermittent to constant treatment. We disagree. The Class 2 criterion regarding treatment is that intermittent to constant treatment *may* be required [emphasis added]. The criterion under Class 1 is that *no* treatment or intermittent treatment is required [emphasis added]. We note further that Dr. K's narrative placing the claimant in Class 1 contains an inconsistency in that, as previously mentioned, Dr. K stated in his report that the claimant needs intermittent topical attention to his burn areas.

The hearing officer erred in determining that the claimant was not entitled to impairment under Class 2 of Table 2, page 280 of the AMA Guides for his skin disorder due to his failure to show that intermittent or constant treatment was required because the AMA Guides contain no such requirement for inclusion in Class 2. We accordingly reverse the decision of the hearing officer that the claimant's IR is 9% and remand the issue of IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. K is the designated doctor in this case. On remand, the hearing officer is to determine if Dr. K is still qualified and available to serve as designated doctor. If Dr. K is still qualified and available to serve as the designated doctor, the hearing officer is to send a request for clarification to Dr. K asking that he explain why his assignment of an IR in this case under Class 1 of Table 2, page 280 of the AMA Guides is appropriate when he indicated in his report that the claimant needs intermittent topical attention to his burn areas. The parties are to be provided with Dr. K's letter of clarification response, or new MMI/IR certification if he deems submission of a new certification necessary, and are to be allowed an opportunity to respond. The hearing officer is then to make a determination concerning IR consistent with the evidence and this decision.

If Dr. K is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's IR for the

(date of injury), compensable injury. The hearing officer is to instruct the designated doctor that the date of MMI is September 14, 2015.

The parties are to be provided with the designated doctor's new MMI/IR certification, if any, and are to be allowed an opportunity to respond. The hearing officer is then to make a determination concerning IR consistent with the evidence and this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge